

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

In the Matter of	)	
	)	
Ramsey Emergency Services, Inc.	)	
	)	Docket No. 04-0406
Application for a certificate of local	)	
authority to operate as a provider of	)	
telecommunications services in all	)	
areas in the State of Illinois.	)	

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BRIEF ON EXCEPTIONS OF APPLICANT,  
RAMSEY EMERGENCY SERVICES, INC.

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APPLICANT REQUESTS ORAL ARGUMENT IN ACCORDANCE WITH  
83 ILL. ADM. CODE 200.850 (a)(3)

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By its counsel:

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**TABLE OF CONTENTS**

<b>I. ORAL ARGUMENT REQUESTED .....</b>	<b>3</b>
<b>II. INTRODUCTION .....</b>	<b>3</b>
<b>III. RES HAS THE FINANCIAL QUALIFICATIONS TO PROVIDE TELECOMMUNICATIONS SERVICES .....</b>	<b>4</b>
<b>A. THE COMMISSION SHOULD FIND THAT RES HAS SATISFIED THE HEIGHTENED STANDARDS FOR FINANCIAL QUALIFICATION APPLIED BY THE STAFF. ....</b>	<b>4</b>
<b>B. THE COMMISSION SHOULD FIND THAT THE APPLICANT HAS THE NECESSARY ACCOUNTING AND FINANCIAL RESOURCES. ....</b>	<b>6</b>
<b>C. THE COMMISSION SHOULD FIND THAT "SPECULATIVE FEARS" CANNOT CONSTITUTE CAUSE FOR DENYING THE APPLICATION. ....</b>	<b>7</b>
<b>D. THE COMMISSION SHOULD FIND THAT ILLINOIS LAW PROHIBITS TERMINATION OF SERVICE WITHOUT ADEQUATE NOTICE.....</b>	<b>8</b>
<b>E. THE COMMISSION SHOULD FIND THAT THE SCOPE OF APPLICANT'S BUSINESS IS DISTINGUISHABLE FROM THAT OF THE INCUMBENTS.....</b>	<b>10</b>
<b>F. THE COMMISSION SHOULD FIND THAT APPLICANT HAS THE FINANCIAL RESOURCES TO CREATE A DEPENDABLE NETWORK.....</b>	<b>12</b>
<b>G. THE COMMISSION SHOULD FIND THAT REQUIRING RES TO PROVIDE ALL DETAILS OF UNE ELEMENTS AND COSTS IS PREMATURE. ....</b>	<b>13</b>
<b>IV. RES HAS THE TECHNICAL QUALIFICATIONS TO PROVIDE TELECOMMUNICATIONS SERVICES .....</b>	<b>15</b>
<b>A. THE COMMISSION SHOULD FIND THAT RES' EXPERIENCE PROVIDING THE SAME SERVICES IN OTHER STATES IS CONCLUSIVE PROOF OF TECHNICAL ABILITY .....</b>	<b>15</b>
<b>B. THE COMMISSION SHOULD FIND THAT RES IS NENA COMPLIANT, WHICH WILL BE AN IMPROVEMENT IN EMERGENCY TELEPHONE SERVICE. ....</b>	<b>17</b>
<b>C. THE COMMISSION SHOULD FIND THAT RES ADEQUATELY ANSWERED EACH AND EVERY DATA REQUEST ISSUED BY STAFF. ....</b>	<b>18</b>

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<b>D. THE COMMISSION SHOULD FIND THAT THE TECHNICAL ISSUES RAISED BY SBC WERE FULLY ANSWERED BY APPLICANT. ....</b>	<b>19</b>
<b>E. THE COMMISSION SHOULD FIND THAT RES HAS PROVEN THE ABILITY TO TRANSITION FROM THE INCUMBENT PROVIDERS TO RES.....</b>	<b>26</b>
<b>V. THE PROPOSED ORDER IGNORES THE STATUTORY DELEGATION OF AUTHORITY TO ETSBS TO DEVELOP E9-1-1 PLANS.....</b>	<b>28</b>
<b>A. THE COMMISSION SHOULD FIND THAT THE EMERGENCY TELEPHONE SERVICE ACT DELEGATES RESPONSIBILITY AND AUTHORITY TO ETSBS FOR E9-1-1 PLANS. ..</b>	<b>28</b>
<b>B. THE COMMISSION SHOULD FIND THAT ETSBS, SUCH AS ST. CLAIR COUNTY, WANT AND NEED BETTER SERVICE. ....</b>	<b>30</b>
<b>VI. CONCLUSION .....</b>	<b>32</b>

COMES NOW, the Applicant, Ramsey Emergency Services, Inc., by and through its counsel, Richard W. Hird of Richard W. Hird, P.A., and, pursuant to Section 200.830 of the Illinois Commerce Commission Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits this brief on exceptions to the Administrative Law Judge's ("ALJ") Proposed Order ("PO") issued on November 30, 2004.

In accordance with Section 200.830(b)(2) of the Illinois Commerce Commission Rules of Practice, Applicant is submitting this Brief on Exceptions as one document and a separate document designated as Exceptions.

## **I. Oral Argument Requested**

In Accordance with 83 Ill. Adm. Code 200.850(a)(3), Applicant requests oral argument before the Commission. This is a case of first impression in Illinois and has significant implications for the provision of emergency telephone service, widely regarded as an essential public service. Oral argument will assist the Commission in being apprised of all information and arguments, to the fullest extent possible.

## **II. Introduction**

Ramsey Emergency Services, Inc. (RES) seeks authority to become a competitive provider of E911 emergency telephone services in the State of Illinois. The introduction of competition in the provision of E911 service will benefit the citizens of the State of Illinois by providing an incentive for providers of emergency telephone services to utilize the best technology available for Emergency Telephone Service Boards ("ETSB"), Public

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Safety Answering Points ("PSAP") and County governments. Better service and, secondarily, cost savings, are direct benefits of competition. Perhaps in no other area of telephone service is the introduction of competition more important to the citizens of this state.

The issue in this docket is limited to whether RES has the financial, technical and managerial qualifications to provide the services contemplated by the applicable sections of the Public Utility Act, 220 ILCS 5/13-403, 13-404 and 13-405 and waivers of 83 Illinois Administrative Code Parts 710, 735, 735.180, 725.205(a)(6), 725.205(d), 725.210(e) and 725.500(o). The Staff of the Illinois Commerce Commission ("Staff") agreed that RES satisfied the requirements for managerial, financial and technical ability, but as a matter of policy, expressed concerns about whether competition should be introduced. Applicant also seeks

The uncontroverted evidence was that RES has substantial, actual experience providing E911 telephone services for ETSBs and PSAPs in other states – the same services which it proposes to offer in Illinois. There is no question that RES has the managerial, financial and technical qualifications to provide the same services in Illinois.

### **III. RES Has the Financial Qualifications to provide telecommunications services**

#### **A. The Commission should find that RES has satisfied the heightened standards for financial qualification applied by the Staff.**

The evidence is uncontroverted that RES satisfied the elevated, more stringent standard applied by Staff in evaluating RES' financial qualifications. Staff witness

Robert Koch testified that the standard employed for evaluating financial qualifications in typical CLEC license applications includes:

To display that it possesses sufficient financial resources and abilities, an applicant shall provide an accurate balance sheet and income statement, which reflects sufficient cash to transact business and provide service for 90 days (according to the applicant's business plan), and also positive net worth. (Staff Exhibit 1.0, p.6, lns.124-128)

In this case, however, Mr. Koch utilized a subjective, heightened standard, requiring RES to demonstrate it has a **"very healthy financial outlook"** and is **"highly stable financially."** (Staff Exhibit 1.0, p.10-11, lns. 216-220; 224-226; emphasis added; See also, Transcript, p.115, lns. 17-22, p.116, lns. 1-3)

RES met the elevated, subjective standard employed by Mr. Koch:

In my direct testimony, I did not have sufficient information available to assert that RES had sufficient financial capabilities to provide the services that it intends to provide. Since then, RES has filed additional testimony which I have reviewed and causes me to change my recommendation. In particular, I am persuaded by Mr. Hixson's testimony, the business plan provided Rebuttal Exhibit H-2, the pro-forma financial statement provided in Rebuttal Exhibit H-3, and the line of credit provided in Rebuttal Exhibit H-4. Together, these pieces of evidence indicate that RES has for the most part the necessary financial ability to operate as a competitive provider of E-911 services in Illinois..." (Staff Exhibit 1.1, p.2, lns.24-33)

\* \* \*

"...I see no reason why the application for certificate authority by RES cannot be granted." (Staff Exhibit 1.1, p.6, lns.123-124)

The Analysis and Conclusions in the ALJ's Proposed Order fails to acknowledge the imposition of a heightened standard by the Staff, the uncontroverted evidence that

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RES satisfied that standard, and the affirmative finding by the Staff that RES has met the financial qualifications for certification.

**B. The Commission should find that the Applicant has the necessary accounting and financial resources.**

The Proposed Order fails to fully recite the testimony of Mark Hixson on behalf of the Applicant, with regard to the Applicant's financial qualifications. Mr. Hixson testified that the Applicant provided Staff with the Applicant's chart of accounts, that it maintains its accounting records in accordance with Generally Accepted Accounting Principles, and that the Certified Public Accountants regularly employed by the Applicant will assist in maintaining the Applicant's records in accordance with the July, 2003, "Working Copy of the Uniform System of Accounts for Telecommunications Carriers in Illinois." (Applicant Exhibit 5.0, p.2, lns.18-30) Mr. Hixson also testified that "RES plans to make a substantial investment in facilities located in the State of Illinois to provide E9-1-1 services, including purchasing one or more selective routers." (Applicant Exhibit 5.0, p.3, lns.57-59) He further testified, "RES has the necessary financing in place to purchase a selective router and to make other investments in facilities in the State of Illinois." (Id., p.5, lns.98-100) He introduced as Exhibit H-4, a letter from the manufacturer of the selective router confirming RES' line of credit for the purchase of the selective router. (Applicant Exhibit 5.4)

No party offered any evidence to the contrary – or even bothered to cross examine Mr. Hixson. Therefore, the ALJ's finding that the Applicant "...will [not] be able to purchase the selective router plus all of the remaining elements necessary to sustain

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uninterrupted service” is not supported by any evidence whatsoever. In fact, it is exactly contrary to the only, undisputed evidence admitted. Findings must be supported by substantial evidence based on the entire record. *GTE MTO, Inc. v. The Illinois Commerce Commission*, 166 Ill.App.3d 916, 924, 521 N.E.2d 547, 1988 Ill.App. LEXIS 105, 118 Ill.Dec 265 (1988). The introduction of uncontroverted evidence is significant. In *GTE MTO, Inc.*, the court noted that, “None of the intervenors challenged the technical, financial, and/or managerial resources and abilities of AT&T to provide the proposed services.” *Id.*, at 921. Likewise, in this case, none of the witnesses challenged Mr. Hixson’s testimony that Applicant has the financial resources to purchase the elective router and make the necessary expenditures for facilities.

**C. The Commission should find that “speculative fears” cannot constitute cause for denying the Application.**

The root issue in this case, and the reason cited by the ALJ for denying the application, was characterized by the ALJ as follows: “The principal question remains, however, what would the result be if Applicant were unable to provide the service for which they were certificated?” All of the reservations expressed by Staff and the reasoning cited by the ALJ for denying the application stems from the speculative fear that RES will discontinue service without adequate notice, leaving the citizens served by the system without service.

RES has met even the heightened financial requirements applied by Staff and there is no evidence in the record otherwise. There is no reason to believe – and no evidence whatsoever – that RES will abruptly discontinue providing service. Staff



admitted that RES has the requisite financial ability. No other party introduced evidence to the contrary. But the ALJ proposes that RES should be denied its certificate authority based upon the “what if” supposition that RES will discontinue service without notice or the opportunity for the ETSBs to make other arrangements for service.

This Commission has specifically ruled that “speculative fears” cannot form the basis for denial of a certificate. *City of Naperville: Applications for Certificates of Service Authority to provide facilities-based and resold local exchange and interexchange telecommunications services*, Docket No. 03-0779. The reasons cited in the proposed order are exactly that: speculative fears, not based upon any evidence whatsoever.

**D. The Commission should find that Illinois law prohibits termination of service without adequate notice.**

The Public Utility Act already provides the answer to Staff's speculative fear that RES will discontinue service without notice. It is illegal for a telecommunications carrier to abandon service without at least 30 days' written notice to the Commission and all affected customers. 220 ILCS 5/13-406 provides, in pertinent part:

**No telecommunications carrier offering or providing competitive telecommunications service shall discontinue or abandon such service once initiated except upon 30 days notice to the Commission and affected customers.** The Commission may, upon its own motion or upon complaint, investigate the proposed discontinuance or abandonment of a competitive telecommunications service and may, after notice and hearing, prohibit such proposed discontinuance or abandonment if the Commission finds that it would be contrary to the public interest. (emphasis added)

The Commission may act immediately to restrain any illegal act, even an act that is merely threatened. 220 ILCS 5/13-303 provides, in pertinent part:

Sec. 13-303. Action to enforce law or orders. Whenever the Commission is of the opinion that a telecommunications carrier is failing or omitting, **or is about to fail** or omit, to do anything required of it by law or by an order, decision, rule, regulation, direction, or requirement of the Commission or is doing or permitting anything to be done, **or is about to** do anything or is about to permit anything to be done, contrary to or in violation of law or an order, decision, rule, regulation, direction, or requirement of the Commission, the Commission shall file an action or proceeding in the circuit court in and for the county in which the case or some part thereof arose or in which the telecommunications carrier complained of has its principal place of business, in the name of the People of the State of Illinois for the purpose of having the violation or threatened violation stopped and prevented either by mandamus or injunction. The Commission may express its opinion in a resolution based upon whatever factual information has come to its attention and may issue the resolution ex parte and without holding any administrative hearing before bringing suit. **Except in cases involving an imminent threat to the public health and safety**, no such resolution shall be adopted until 48 hours after the telecommunications carrier has been given notice...

The Commission shall file the action or proceeding by complaint in the circuit court alleging the violation or threatened violation complained of and praying for appropriate relief by way of mandamus or injunction.  
(emphasis added)

The statute clearly provides a remedy where an actual or threatened breach by a telecommunications carrier threatens public safety.

The Act also contains provisions for injunctive relief (220 ILCS 5/13-303.5), civil penalties (220 ILCS 5/13-304) and appointment of a receiver for insolvent public utilities upon as little as three days' notice (220 ILCS 5/4-501). A receiver may take possession

of the assets and operate the telecommunications carrier. Thus, the legislature has already provided the mechanism for the Commission to respond to any 9-1-1 carrier that ceases operations.

**E. The Commission should find that the scope of Applicant's business is distinguishable from that of the incumbents.**

The Proposed Order would require any new market entrant to have financial resources "in the same financial league" as the current E9-1-1 providers. The practical result of such a requirement would be to kill any chance for competition to improve emergency telephone service and/or reduce costs in the state. The uncontroverted evidence in this case illustrates why the requirement is unnecessary.

The nature of the business conducted by RES is specialized, requiring less capital investment than current E9-1-1 providers. The Proposed Order compares Applicant's financial strength with the financial strength of the current E9-1-1 providers without considering the undisputed testimony offered by Applicant that the limited nature of the business to be conducted by Applicant requires less capital investment and less risk than that required of the ILECs. While SBC and the other ILECs provide voice, data and a wide range of telecommunications services to thousands, if not millions, of residential and business customers, RES will focus on providing only emergency telephone services to a relatively small number of ETSBs. As Mr. Hixson testified:

The business RES will be entering involves much less capital investment and financial risk than the business of traditional facilities-based CLECs, for several reasons. **RES plans to make a substantial investment in facilities located in the State of Illinois to provide E9-1-1 services,**

**including purchasing one or more selective routers.** However, it is my understanding that facilities-based CLECs require more capital investment in infrastructure and network facilities because of the extent of the services they offer. **RES is proposing to purchase or build an E9-1-1 specific infrastructure to provide E9-1-1 specific services,** which is more limited than that which would be required of a facilities-based CLEC delivering a full range of consumer services. RES will be offering a restricted type of service, not the wide range of services offered by traditional CLECs. And the way RES will conduct business, by contracting with LECs, ETSBs or other governmental units responsible for E9-1-1 services at specific rates and for specific periods of time, is far different than a traditional CLEC. RES will have fewer customers and consequently, a much smaller risk of uncollectible receivables. Instead of having to invoice hundreds, thousands or even hundreds of thousands of customers, RES will be invoicing a much smaller number of LECs and/or governmental units. Thus, in my view, it is a much more stable financial environment than that faced by traditional CLECs. (Applicant Exhibit 5.0, p.3, ln.55 to p.4, ln.73)

There was no cross examination of Mr. Hixson by any party, nor did any party introduce any evidence controverting Mr. Hixson's analysis.

Furthermore, the Proposed Order fails to acknowledge the fact that RES will be attracting customers one at a time and will have the ability to develop its business without over-extending its resources. As Mr. Ramsey testified, once certificated, RES will have to convince individual ETSBs that RES has the ability to provide services. "RES will probably not be able to attract all counties in Illinois as customers; thus, we will have the ability to focus on the specific needs of particular 9-1-1 systems." (Applicant Exhibit 3.0, p.17, lns.363-365)

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**F. The Commission should find that Applicant has the financial resources to create a dependable network.**

The Proposed Order questions whether RES has the resources to build and maintain an infrastructure to deliver dependable services. At page 14 of the Proposed Order, the ALJ cited RES' answer to a data request propounded by Staff with regard to RES' contingency plan for ensuring that service would not be interrupted. The ALJ's conclusion was that RES will not be able to utilize the exact same technique currently utilized by 9-1-1 system providers. (PO, p.14)

The evidence was exactly to the contrary. Michael Ramsey and Mark Hixson both testified that RES will build facilities and/or order network components on a UNE basis, as each circumstance dictates.

The services we will purchase from the ILECs are network elements, not E9-1-1 service. We won't purchase network elements if we can build our own network infrastructure. That decision will be based on the economics of a particular system. However, it's no different than what we have been doing for Marion County, Iowa, i.e., purchasing A, B and C links from the ILECs on behalf of the counties.

\* \* \*

The fact that we won't own parts of the network is irrelevant. At present, ILECs providing E9-1-1 services in Illinois don't own all of the networks they support; they interconnect with other LECs, and deliver to contracted providers, just as RES proposes to do. (Applicant Exhibit 3.0, p.12, lns.259-264; p.13, lns267-270)

Presently, the incumbent providers of E9-1-1 service utilize network elements (UNE) owned by other carriers to transport emergency calls. SBC, for example, does not own and maintain the entire infrastructure it utilizes to provide E9-1-1 service. As Staff

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witness Marci Schroll testified, SBC uses networks owned by other companies to transport calls and data related to E9-1-1 services. In the same manner, RES can create a network to provide the same service. (Transcript, p.154, ln.13 to p.155, ln.16)

Likewise, SBC and other incumbent providers subcontract significant portions of emergency telephone service, including database management, to entities not even under the jurisdiction of the Commission. SBC, for example, subcontracts database management to Intrado, a company not subject to the jurisdiction of the Commission. The Staff admitted that they have no idea how long it would take for SBC to provide the services that Intrado is currently providing in the event Intrado were to stop operating for any reason. (Transcript, p.167, lns7-11)

By contrast, RES will be subject to the jurisdiction of the Commission and proposes to provide its own database management within the State of Illinois. (Transcript, p.155, lns.17-21) RES can create a system network by building facilities and/or ordering lines on a UNE basis in the same manner as the current E911 providers. (Transcript, p.155, lns10-16)

**G. The Commission should find that requiring RES to provide all details of UNE elements and costs is premature.**

The Proposed Order is critical of RES for failing to specify the precise elements it will purchase on a UNE basis and the cost of those elements and concludes that the failure to do so shows Applicant is "getting in over its head financially." In answer to Staff Data Requests 1.28, 1.30, 1.31 and 1.32, RES indicated that RES needs to enter into interconnection agreements with SBC and other ILECs in order to be able to specify the

precise UNE elements it will need to purchase for a particular ETSB and the costs thereof. SBC has refused to negotiate an interconnection agreement until RES has an OCN from NECA; NECA will not issue an OCN until RES is certificated to provide service. RES has been placed in an impossible situation through no fault of its own.

SBC should not be allowed to argue that RES has failed to provide specific information on UNE elements and costs when it is the refusal of SBC to negotiate an interconnection agreement until RES obtains an OCN from NECA (which SBC knows NECA will not issue until after RES is certificated) that has prevented RES from obtaining the necessary information.

Despite this predicament, RES submitted pro forma income and expense projections and there was no cross examination of Mr. Ramsey with regard to the sufficiency of the data. Significantly, Staff witness Robert Koch specifically referred to the business plan and projections provided by RES in concluding that RES had met the higher standard for financial ability to provide service. (Staff Exhibit 1.1, p.2, lns.26-31)

The pro forma financial statement provided by Mr. Hixson in Applicant Exhibit 5.2 [Hixson Exhibit H-2, Designated Confidential]) was apparently not considered by the ALJ. The Net Income projections show RES' profitability (as a percentage of total revenues) to be well above the range required for financial stability. Applicant believes its profitability (as a percentage of revenues) will be significantly higher than the profitability most recently reported by the incumbents. The cumulative Net Income will be carried over to the next year as retained earnings. The result is that RES will have better EBITA (expressed as a percentage of revenues) than the incumbents and substantial cash reserves.

The pro forma income projections provided by Mr. Hixson in Applicant Exhibit 5.2 were specifically considered and referenced by Staff witness Robert Koch in his conclusion that Applicant has satisfied the applicable financial standards.

#### **IV. RES HAS THE TECHNICAL QUALIFICATIONS TO PROVIDE TELECOMMUNICATIONS SERVICES**

##### **A. The Commission should find that RES' experience providing the same services in other states is conclusive proof of technical ability**

The statutes require RES to demonstrate that it has the technical "ability" to provide telecommunications services. What greater evidence of the "ability" can there be than a track record of having actually provided the services? RES presented undisputed evidence that for more than four years, it has provided the same emergency telephone services in other states that it proposes to provide in Illinois. The results have been better service and lower costs. Mr. Ramsey testified about the actual experience of RES:

Q: What did RES do for Iowa Telecom?

A: For about four years, RES provided all maintenance of the selective router hardware and software, including database management, utilized in Marion County. We also ordered E9-1-1 trunking on behalf of the counties in Iowa RES was serving. Those are the same services RES proposes to offer in Illinois.

\* \* \*

Q. Is Marion County the only county in Iowa in which RES has provided database management?

A. No. As Ms. Schroll indicated, RES has provided database management in five counties in Iowa. I'm proud of the quality of service we have provided to those E9-1-1 systems in Iowa and I believe our customers are very satisfied.

Q. Is Iowa the only state in which RES has provided E-9-1-1 related services?



A. No. In addition to providing these services in Iowa, RES has provided E-9-1-1 delivery to CPE for 53 PSAPs in 39 ETSB organizations in four states. In response to Staff Data Request 1.02(a) and (b), we provided Staff with the names, addresses, telephone numbers and contact persons for 23 ETSBs we currently serve and invited Staff to contact those customers to verify the accuracy of the information we have provided, as well as our technical and managerial ability to deliver E9-1-1 services. Attached hereto as Exhibit R-2 is a copy of the information provided in response to Staff Data Request 1.02(a) and (b), filed under seal and designated as Confidential and Proprietary. (Applicant's Exhibit 3.0, p.8, Ins.154-159, 176-190)

The strongest, most conclusive proof of "ability" to provide the services is RES' uncontested testimony that it has actually done so. Yet, the Analysis and Conclusions set forth on pages 13-15 of the Proposed Order totally ignore that evidence, failing to even mention RES' experience and track record. The Commission's orders must be supported by "substantial evidence based on the record." "Substantial evidence consists of more than a mere scintilla but may be something less than a preponderance of evidence and is such evidence as a reasoning mind would accept as sufficient to support a particular conclusion." *Citizens Utility Board v. Illinois Commerce Commission*, 291 Ill.App.3d 300, 683 N.E.2d 938, 1997 Ill. App. LEXIS 558, 225 Ill.Dec. 435 (1997), citing *People ex rel. O'malley v. Illinois Commerce Commission*, 239 Ill.App.3d 368, 376, 606 N.E.2d 1283, 180 Ill.Dec. 206 (1993). A "reasoning mind" would have to consider Applicant's actual experience providing the same services as the best evidence of its ability to do so.

**B. The Commission should find that RES is NENA compliant, which will be an improvement in emergency telephone service.**

Mr. Ramsey testified that RES is compliant with all of the standards prescribed by the National Emergency Number Association ("NENA"), while SBC and many other ILECs, are not:

Q. What is the significance of RES' compliance with NENA standards?

A. The National Emergency Number Association (NENA) prescribes standards for 9-1-1 providers to protect public safety, which is an obvious and real concern for all of us. RES is NENA compliant, while SBC and many other ILECs are not. This is important because these recommended standards help ensure consistency in the 9-1-1 industry. Telecoms, vendors and users all benefit from widespread adoption of the recommended standards. (Applicant Exhibit 3.0, p.17, lns.366-372)

Likewise, Mr. Norman Forshee, 9-1-1 Coordinator for the St. Clair County Emergency Telephone System, testified that "[RES] has been following NENA standards. Our current provider, SBC, does not follow NENA standards even though it participated in the drafting of the standards." (St. Clair County Exhibit 1.0, p.2, lns.21-23)

Significantly, nowhere in Mr. Valentine's testimony does he deny that SBC is not NENA compliant, nor does he deny that RES is compliant. Despite the fact that SBC participated in drafting the standards, SBC does not comply with the standards. This not only substantiates Applicant's technical ability to provide service, but also illustrates that the quality of service provided to the citizens of Illinois can be improved.

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**C. The Commission should find that RES adequately answered each and every data request issued by Staff.**

The Proposed Order challenges the “sufficiency of Applicant’s answers to Staff and SBC Illinois data requests.” (PO, p.15) Yet, the discussion following that statement concerns only the technical issues raised by SBC. It is incorrect to suggest that RES did not fully answer the data requests issued by Staff.

On June 30, 2004, Staff submitted ICC Staff Data Requests 1.01 through 1.37. RES responded on July 14, 2004. On July 30, 2004, Staff witnesses Robert F. Koch and Marci Schroll filed Direct Testimony in which they indicated they considered Applicant’s answers to be inadequate. (Staff Exhibits 1.0 and 2.0) On August 6, 2004, the ALJ conducted a status conference by telephone conference call, during which Applicant agreed to supplement its responses to Staff’s data requests. On August 13, 2004, Applicant submitted its Supplemental Responses to Staff Data Requests 1.01 through 1.37 and Revised Rebuttal Testimony of Michael Ramsey and Mark Hixson.

As a result of the Revised Testimony and Supplemental Responses provided to Staff by Applicant, Mr. Koch and Ms. Schroll changed their findings:

Q. Has the supplemental financial information provided by RES witness Mr. Hixson caused you to change your recommendation in this proceeding?

A. Yes. In my direct testimony, I did not have sufficient information available to assert that RES had sufficient financial capabilities to provide the services that it intends to provide. Since then, RES has file additional testimony which I have reviewed and causes me to change my recommendation. (Koch Supplemental Direct Testimony, Staff Exhibit 1.1, p.1-2, lns.20-28)

\* \* \*

Q. Based on the revised pre-filed rebuttal testimony of Michael Ramsey and the supplemental information filed

onbehalf of RES, is Staff able to provide a positive recommendation concerning RES's ability to meet the technical and managerial capabilities in order to obtain Commission certification to operate as a provider of telecommunications services in Illinois?

A. RES, in its supplemental filings and supplemental responses to data requests, was able to supply Staff with additional information that more adequately complied with Staff's data requests, as well as responded to Staff's direct testimony, thus resolving certain discrepancies about which Staff was concerned.

Q. Does this additional information cause you to alter the recommendation you offered in your direct testimony dated July 30, 2004?

A. Yes. I believe that RES has satisfactorily met the criteria for certification to operate as a telecommunications carrier. (Schroll Supplemental Direct Testimony, Staff Exhibit 2.1, p.1-2, lns.14-27)

Thus, the responses to Staff data requests was deemed by Staff to be adequate and the suggestion in the Proposed Order that the responses were somehow inadequate is not supported by any evidence.

**D. The Commission should find that the technical issues raised by SBC were fully answered by Applicant.**

On July 30, 2004, SBC witness Eugene Valentine filed direct testimony in opposition to the application, raising questions regarding the adequacy of RES' responses to six technical issues, including

1. End Office-to-Selective Router trunking
2. E9-1-1 Selective Routing
3. E9-1-1 Database Updates
4. Service Ordering/Provisioning
5. Back-up PSAPs
6. Private Switch/Automatic Location Identification Service, including trunking options and record updates. (SBC Illinois Exhibit 1.0, p.7)

Michael Ramsey of RES testified that RES has actual experience handling each and every issue raised by Mr. Valentine:

[Mr. Valentine] has provided a very simplified list which is correct as far as it goes, but it's not complete. I would add the following: End Office to Selective Router Trunking is the "A" link, but he omitted the Selective Router to PSAP trunking, which is the "B" link. His reference to E-9-1-1 database updates should have included database management, which includes not only the updates, but also daily maintenance, historical management and ALI delivery. Service ordering and provisioning is done by the LECs; the LECs transmit the customer information relating to E9-1-1 ALI records to the E9-1-1 database manager, who then manages the database accordingly. Service ordering and provisioning is, very simply put, a record exchange. Finally, when he refers to PS/ALI service, including trunking options and record "updates," he should have more specifically said record management, which incorporates much more than just updates.

**Q. Does RES have experience with each of these functional components?**

**A. Yes. RES has provided each and every functional component described by Mr. Valentine for 9-1-1 service providers in Iowa.** (Applicant Exhibit 3.0, p.13, ln.282 to p.14, ln.296; emphasis added)

As indicated *infra*, the actual experience of RES in handling each and every technical issue raised by SBC is the best evidence of RES' technical ability. Neither SBC, nor any other party, denied that RES has that experience.

On August 13, 2004, RES filed Supplemental Responses to Staff's Data Requests, which covered the same areas raised by Mr. Valentine. Additionally, on August 13, 2004, RES filed Revised Rebuttal Testimony of Michael Ramsey, which specifically addressed the six issues raised by Mr. Valentine:

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### 1. End Office-to-Selective Router trunking

Mr. Ramsey testified that Mr. Valentine's description of End Office-to-Selective Router trunking included only the "A" link, while the description should have included the Selective Router-to-PSAP trunking, which is the "B" link. (Applicant Exhibit 3.0, p.13, Ins.282-285) Mr. Ramsey testified that **RES has actual experience handling the trunking issues raised by Mr. Valentine**, including the ordering of trunking on a UNE basis on behalf of Iowa Telecom and LTDS (a CLEC) through Qwest Networks for Marion County, Iowa, just as RES proposes to do in Illinois. (Applicant Exhibit 3.0, p.8, Ins. 154-157, 168-170; Applicant Exhibit 4.0, p.9, Ins.182-187; Transcript, p.91, Ins.12-18)

In response to Staff Data Request 1.14, RES described the manner in which it will handle split exchanges and calls crossing LATA boundaries. The answer was based upon RES' actual experience in transitioning from one provider to another, taking into consideration all elements of E9-1-1 delivery. (Appendix 1, Data Request 1.14, p. 18)

The only cross examination of Mr. Ramsey consisted of one question regarding whether RES had ordered UNE trunking on behalf of itself. Mr. Ramsey's answer was that RES had ordered E9-1-1 tunking on behalf of the counties RES was serving. (Transcript, p.90, Ins.11-18 to p.91, Ins.12-18) No party challenged RES' representation that it has actually handled the same trunking issues and has actually ordered trunking on a UNE basis. A "reasoning mind" would have to conclude that RES has the technical ability to do the same in Illinois. *Citizens Utility Board v. Illinois Commerce Commission*, 291 Ill.App.3d 300, 683 N.E.2d 938, 1997 Ill. App. LEXIS 558, 225 Ill.Dec. 435 (1997).

## **2. E9-1-1 Selective Routing**

Mr. Ramsey testified that RES has provided E9-1-1 delivery for 49 PSAPs in 33 ETSB organizations in four states. RES has more than four years of actual experience maintaining the selective router utilized in Marion County, Iowa, including hardware, software and database management. (Applicant Exhibit 3.0, p.8, ln.154 to p.10, ln.198) Applicant's selective router will be capable of handling wireless phase 0 calls, wireless phase I calls, and wireless phase II calls in all technical formats (i.e., CAS, NCAS or Hybrid CAS). (Appendix 1, Data Request 1.07, p.11)

Jamie Carlund, who is responsible for database management for Iowa Telecom, confirmed that the database product used by RES provides all of the services needed to provide E9-1-1 database management. (Applicant Exhibit 3.0, p.8, ln.162 to p.9, ln.175; Applicant Exhibit 3.1) Likewise, the E9-1-1 Coordinators for Lucas, Marion and Kossuth Counties all confirmed that RES is providing "efficient and effective" database management. (Applicant Exhibit 3.0, p.9, ln.191 to p.10, ln.198; Applicant Exhibit 3.3)

## **3. E-9-1-1 Database Updates**

The uncontroverted evidence is that RES has successfully provided database management and ALI delivery in five Iowa counties. (Applicant Exhibit 3.0, p.9, ln.176-180) Not only does RES have actual experience handling database updates, but its software was able to resolve file update disputes that Intrado (the company to which SBC subcontracts its database management) was not able to resolve. Mr. Ramsey testified that after GTE sold its telecommunications properties to Iowa Telecom, it contracted with Intrado for database management. RES provided the initial Master Street Address Guide ("MSAG") file loads to Iowa Telecom and Intrado for its five respective counties and

RES continues to provide annual updates. Neither Iowa Telecom, nor Intrado, were able to resolve discrepancies in their MSAG, while RES' software was able to resolve the discrepancies, providing clean and accurate file management, historical records and service order changes (moves/adds/changes). (Applicant Exhibit 3.0, p.10, ln.204 to p.11, ln.222; Appendix 1, Data Requests 1.01(g), p.3; 1.02, p.5; 1.14, p.18)

#### **4. Service Ordering / Provisioning**

Mr. Ramsey testified that service ordering and provisioning<sup>1</sup> is a record exchange that RES has previously provided for 9-1-1 service providers in Iowa. (Applicant Exhibit 3.0, p.13, ln.290-291, p.14, ln.294-296) Service ordering and provisioning is part of the E-9-1-1 system deployments RES has accomplished for the 49 PSAPs in the 33 ETSBs it has served in four states. The testimony was not controverted by any party.

#### **5. Back-up PSAPs**

The issue posed by Mr. Valentine was how RES would handle call routing to adjacent PSAPs served by different E9-1-1 providers where one of the PSAPs is swamped with calls or disabled and the other is designed to handle overflow. The answer provided by RES in response to SBC Data Request 19 described exactly how RES would handle the situation:

Back-Up PSAP is within a different County served by same Selective Router / Tandem Is accomplished by Alternate Routing Translations Inherent to Switch and delivered by Assigned Call delivery Network B-links & PSAP Position Data Delivery. Another E-911 Service Provider will be accomplished by similar means, through auxiliary trunk delivery network design.

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<sup>1</sup> SBC Illinois has a training course available for this topic if and when need or required by customers, integrators and vendors' order processors. Applicant acknowledges that there was no testimony introduced with regard to the training course.



Mr. Valentine's testimony indicates he did not believe RES had a clear understanding of the question or the issues because it used terms with which he was not familiar. (SBC Exhibit 1.0, p.17) It cannot be stated any more clearly that this exactly how this is done today by current E9-1-1 providers. Whether Mr. Valentines is familiar with the terminology or technology used by other providers and their respective OEMs, is not dispositive of whether RES understands the issue or has provided an acceptable response. Mr. Ramsey testified that the same issue could apply to any E9-1-1 provider in Illinois. (Applicant Exhibit 3.0, p.19, ln. 422 to p.20, ln.432) He also testified that SBC's methodology is not the only acceptable solution:

The system Mr. Valentine describes was designed in the 1970's using analog technology and the design has served the citizens of Illinois well. With technology advances over the last 30 years, there are improved ways of providing services through a digital network and advances in the computer industry. At RES, we have demonstrated the technical expertise to design, configure, implement, manage and maintain the existing 9-1-1 infrastructures. RES stands ready to also deploy modern technology and network architecture that will improve the 9-1-1 services in Illinois. (Applicant Exhibit 3.0, p.18, ln.384-391)

## **6. PS / ALI**

Mr. Valentine questioned whether RES understands the range of responsibilities involved in Private Switch / Automatic Location Identification services. Again, this is an area where the uncontroverted evidence is that RES has actual, successful experience handling PS/ALI issues. As Mr. Ramsey testified:

RES' software has the ability to custom format for PS/ALI solutions. For example, Pella College in Pella, Iowa, has 1,881 campus PS/ALI records delivered on an ISDN primary rate from a PBX to the LEC, delivered to our PSAP for accurate ALI delivery. RES' ALI database management

software can interface with multiple data formats for updating PS/ALI records. RES understands the complexity of PS/ALI customers wanting to maintain existing PS/ALI contracts with existing service providers. (Applicant Exhibit 3.0, p.17, lns.373-380)

In response to Data Request 1.14, which asked RES to detail the manner in which RES will manage split exchanges and calls crossing LATA boundaries, RES used the example of Marion County, Iowa. In that case, RES managed te successful transition from one E9-1-1 provider to another and in the process, handled every technical issue raised by Mr. Valentine, including "testing (included precut over selective routing and 9-1-1 call test with ALI query and delivery....RES's E911 Database and ALI Delivery were loaded, tested and accepted by the customers on the first Initial Load of the database." (Appendix 1, Data Request 1.14, p.19) Neither SBC, nor Staff, nor any other party, denied that RES has actual experience handling PS/ALI issues.

On August 27, 2004, Mr. Valentine filed Rebuttal Testimony, in which he reduced the number of issues to three: End Office-to-Selective Router trunking, Service Ordering, and Private Switch/Automatic Location Identification (PS/ALI) Service Options. Mr. Ramsey's Surrebuttal testimony responded as follows:

Mr. Valentine can't deny that RES has considerable experience in the provision of E-911 services. RES has practical experience in handling every technical question raised by Mr. Valentine in the course of providing a variety of 9-1-1 services to ETSBs and LECs in Iowa. [fn.omitted] RES has handled trunking and routing issues, split exchanges, ordering UNE components, interconnections with CLECs and wireless carriers, PS/ALI issues - each and every issue raised by Mr. Valentine. We've even experienced the transition from one 9-1-1 provider to another in Iowa and have seen first hand how it can be accomplished in a professional and orderly manner, while

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maintaining public safety. (Applicant Exhibit 4.0, p.9, lns.183-191)

Thus, the suggestion in the Proposed Order that RES did not adequately respond to technical questions raised by SBC is not supported by the evidence.

Finally, the Commission should take into consideration the fact that SBC is RES' direct competitor. It would not seem unusual for RES' competitor to attempt to raise issues to contest certification. The Commission Staff examined the same information – as well as some information RES did not provide to SBC on the basis of the information being confidential – and found that RES has the technical ability to provide the services for which it seeks certification.

**E. The Commission should find that RES has proven the ability to transition from the incumbent providers to RES.**

The Proposed Order questions whether RES adequately responded to issues regarding the transition from the current E9-1-1 provider to RES. The question raised in the Proposed Order, "What would the consequences be if Applicant did not have the network elements in place prior to conversion?" illustrates that the ALJ did not consider the evidence offered by RES relating to the issue of transitioning between providers. As Mr. Ramsey testified:

Q. Do you have experience in converting and transitioning RES as the provider of E9-1-1 services?

A. Yes, absolutely. We have provided a supplemental response to Staff Data Request 1.15, which asked us to describe the manner in which we will convert the systems over to ours so that there will be no outage of service. More importantly, **we have actual experience with such transitions. For example, in the five Iowa counties RES currently services, RES took over E9-1-1 database management services and delivered those services to**

**each respective county's LEC's selective router, which may or may not have changed from the previous provider to the contracted provider, and there were no interruptions of service or other problems. This also includes re-engineering of all network elements: end office to tandem trunking, tandem to CPE delivery, and ALI circuits.** We loaded the database and verified the accuracy of the records prior to cutting over to RES' software and hardware. It was accomplished in a professional and timely manner. We were actually able to provide better testing and more accurate ALI database loads than the previous providers.

\* \* \*

**As I previously indicated, RES has successfully transitioned database management from the previous 9-1-1 provider to RES in all five counties in Iowa in which RES presently provides services.** Applicant's supplemental answer to Staff's Data Requests 1.15 and 1.16 describe, in detail, how the transition will be handled, **including systems testing prior to cutover.** The order and update processing will be transferred in an orderly manner, meaning RES will load the database information, test the database for discrepancies, and prepare for switch-over to RES. RES will, of course, need to have the network elements in place prior to any conversion. The interconnection with SBC would be the same type of interconnection SBC has with other E9-1-1 service providers, LECs and CLECs. The receipt and updating of ALI records would be the same as between SBC and E9-1-1 service providers. **Our experience with transitioning from previous 9-1-1 providers to RES illustrates that we can and have accomplished the transition without problems.**

(Applicant Exhibit 3.0, p.11, ln.241 to p.12, ln.256; p.15, ln.334 to p.16, ln.347; emphasis added)

The Proposed Order fails to recognize Applicant's Supplemental Response to Staff Data Requests 1.14, 1.15 and 1.16, which detailed the manner in which the transition would be managed. (Appendix 1, Data Requests 1.14, 1.15 and 1.16, p.19-21)

V. THE PROPOSED ORDER IGNORES THE STATUTORY  
DELEGATION OF AUTHORITY TO ETSBs TO DEVELOP E9-  
1-1 PLANS.

**A. The Commission should find that the Emergency Telephone Service  
Act delegates responsibility and authority to ETSBs for E9-1-1 plans.**

The Emergency Telephone Service Act ("ETSA"), 50 ILCS 750/0.01, *et seq.*, delegates to the Emergency Telephone System Boards ("ETSB"), the responsibility for planning, establishing, maintaining, upgrading, adopting specifications and making expenditures for 9-1-1 telephone systems.<sup>2</sup> Section 750/15.4 of the ETSA provides, in pertinent part:

The powers and duties [of the ETSB] shall include,  
but need not be limited to the following:

- (1) Planning a 9-1-1 system.
- (2) Coordinating and supervising the  
implementation, upgrading, or maintenance  
of the system, including the establishment of  
equipment specifications and coding  
systems.  
\* \* \*
- (4) Authorizing all disbursements from the  
fund.
- (5) Hiring any staff necessary for the  
implementation or upgrade of the  
system.

The Commission has the responsibility to "coordinate the implementation of systems" (50 ILCS 750/8), and to establish "technical and operational standards for the local agency systems" (50 ILCS 750/10; see also, *The Village of Montgomery v. Illinois*

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<sup>2</sup> See also, Attorney General Opinion 98-009, April 23, 1998: "The **board** is responsible for coordinating and supervising the implementation and operation of the emergency telephone system and for directing the expenditure of the proceeds of the surcharge, which are to be held in a special fund referred to as the Emergency Telephone System Fund." (emphasis added)

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*Commerce Commission*, 294 Ill.App.3d 484, 490, 618 N.E.2d 1295, 1993 Ill.App. LEXIS 1251, 188 Ill.Dec. 725 (1993)) But the legislature clearly delegated to the ETSBs, responsibility for decisions regarding designing, planning and implementing 9-1-1 systems.

In *City of Chicago V. Illinois Commerce Commission*, 294 Ill.Ap.3d 129, 689 N.E.2d 241, 1997 Ill.App.LEXIS 889, 228 Ill.Dec.369 (1997), the court held that the Commission is authorized to approve or disapprove plans for local 9-1-1 emergency systems pursuant to its authority to oversee the implementation of 9-1-1 systems, but the Emergency Telephone System Act reserve did not authorize the Commission to issue a regulation concerning how subscribers are assessed a surcharge used to finance the 9-1-1 emergency telephone system of a local government. Responsibility for the surcharge was expressly delegated to the ETSBs. In the same manner, and in the same statutes, the development of 9-1-1 plans, including the choice of providers with whom to contract for services, is delegated to the ETSBs.

The Proposed Order would prevent ETSBs from even considering the propriety of Applicant's services. Granting the certificate to Applicant will not require any ETSB to contract with Applicant. But denying the certificate will deprive the ETSBs of the ability to consider the competitive services offered by RES. As Michael Ramsey testified:

It is up to us to demonstrate to the ETSBs and LECs that we can provide better E9-1-1 services, including database management and selective routing, at lower costs. If we can't, we won't have any customers. If we can, we can improve the quality of E9-1-1 service to the citizens of the State of Illinois by introducing better quality E9-1-1 services and, at the same time, save money for the LECs

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providing E9-1-1 services and the county ETSBs.  
(Applicant Exhibit 3.0, p.11, lns.232-237)

If RES is granted its certificate and it negotiates interconnection agreements with ILECs, including SBC, RES can present the details of its proposed services, including network elements, to ETSBs for their consideration. The ETSBs will then present the detailed plans to the Commission for its consideration. The Commission retains the ultimate control to ensure the proposed plan is in accordance with its technical rules. It's a "no lose" situation for the citizens of Illinois.

**B. The Commission should find that ETSBs, such as St. Clair County, want and need better service.**

The testimony of Norm Forshee, 9-1-1 Coordinator for the St. Clair County Emergency Telephone System, established that the St. Clair County ETSB wants and needs better service and that, based upon his **actual experience** with RES, RES can deliver "quality service as cost effectively as possible." What better evidence could the Applicant present than the testimony of the Coordinator of an Illinois ETSB who is thoroughly familiar with RES' service?

Yet, the Proposed Order dismissed Mr. Forshee's testimony as being based upon "simulated exercises...performed under very controlled, if not optimum, conditions [which] could not fairly or accurately reflect Applicant's actual E9-1-1 service." (PO, p.15) **This finding is not based upon any evidence in the record whatsoever.** There was **no evidence** to support a finding that Mr. Forshee's testimony regarding RES was based upon "simulated exercises." There was **no evidence** to support a finding that any such purported exercises were performed under "optimum conditions." There was **no**

**evidence** to support a finding that Mr. Forshee's "could not fairly or accurately reflect Applicant's actual E9-1-1 service."

To the contrary, Mr. Forshee testified that it is St. Clair County's **actual experience** with RES that caused it to endorse approval of the application:

Q. Have you formed an impression of Ramsey Emergency Services' technical capabilities?

A. Yes. We have tested Ramsey's database product with our data and find it acceptable and satisfactory. Ramsey has presented St. Clair County's 9-1-1 System with plans that are equal to or surpass what we now have in place. They have eliminated many points of failure existing with the current configuration. They have given several presentations on our possible future status of VOIP that are in line with directives prepared by NENA. The company has been following NENA standards. Our current provider, SBC, does not follow NENA standards even though it participated in the drafting of the standards. **Verizon used Ramsey to install facilities at Rock Island. Ramsey has been supporting Rock Island on the same CPE that we are using, and had some technical solutions that no one else has been able to do. We already have used Ramsey's existing 24 by 7 access number, and have found it to be timely and more than satisfactory.**

\* \* \*

With Ramsey's router, we will have full back-up capabilities across multiple 911 systems, multiple counties, and multiple LEC served areas. Ramsey's router is phase II complaint, and we have used this switch to become operational on Phase II, and we were the first county in the country to become operational on Phase II. **We have received better and more timely technical information from Ramsey than has been provided by our current provider, SBC. The response time to requests of technical information has been better with Ramsey than either Verizon or SBC.**

Q. **Based upon your experience with Ramsey** and other providers, do you have an opinion with regard to



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Ramsey Emergency Services, Inc.'s ability to provide cost effective services?

**A. Yes. Ramsey has been able to sell manufacturer hardware at lower prices than existing LEC's have. We have found their pricing to be competitive with other vendors. In fact, we were able to terminate Verizon, hire Ramsey, save money in the process, with much better service, and better response time.** Obviously, as a public body, obtaining quality service as cost effectively as possible is of paramount importance, and we feel that Ramsey Emergency Services, Inc. is quite capable of assisting us in accomplishing that ideal. Because of Ramsey, we have the ability to look at technically competent vendors in addition to our other current vendors. **In general, we find that Ramsey has provided much better service than other vendors at the same or better prices.** (St. Clair County Exhibit 1.0, p1, ln.13 to p.2, ln.28; p.3, ln.44 to p.4, ln.65)

Mr. Forshee's testimony regarding the St. Clair County ETSB's actual experience with the Applicant and his knowledge of Applicant's technical ability should be considered as very significant evidence. **Mr. Forshee's testimony was uncontroverted, even by SBC, and no party even bothered to cross examine him.** The Proposed Order fails to give Mr. Forshee's testimony any semblance of the proper weight it is due. The Commission should find Mr. Forshee's testimony to be compelling evidence of Applicant's technical ability to provide the services for which it seeks certification.

## VI. CONCLUSION

The citizens of the State of Illinois depend upon emergency telephone service to be responsive and accurate. To provide that service, ETSBs should have the opportunity to consider the advantages inherent in competition: better service at lower costs. RES has

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actual, historical experience providing the same emergency telephone services in other states that it proposes to provide in Illinois. Granting certification to RES will not require ETSBs to use RES, but for the first time, they will have the option to use a provider that uses the best and latest technology to deliver timely and accurate services.

For all of the above and foregoing reasons, RES respectfully submits that the Proposed Order does not reflect the overwhelming evidence supporting a finding that RES has the financial, technical and managerial ability to provide telecommunications services.

Respectfully Submitted,

Ramsey Emergency Services, Inc.  
By its counsel:

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